

HABERSHAM COUNTY BOARD OF COMMISSIONERS

EXECUTIVE SUMMARY

SUBJECT: Facility Usage Agreement – North Georgia School of Aikido, LLC

DATE: 1/4/2021

☒ **RECOMMENDATION**

☐ **POLICY DISCUSSION**

BUDGET INFORMATION:

☐ **STATUS REPORT**

REVENUE FY 2021/22: \$625

☐ **OTHER**

CAPITAL: N/A

COMMISSION ACTION REQUESTED ON: January 11, 2021

PURPOSE: Provide an opportunity to the citizens of Habersham County to participate in Aikido instructions led by Stephen Rohrabacher, certified United States Aikido instructor.

BACKGROUND / HISTORY: This is a renewal request for a martial arts program which will operate for ten months of the 2021 calendar year. This would be our fourth year entering into a partnership. Aikido is a Japanese martial art that emphasizes circular movements that blends with and redirects an opponent's attack. Classes will be offered monthly to individuals 15 years and older who wish to learn the art of Aikido. Classes will take place on Tuesday and Thursday evenings in which our classrooms are typically vacant.

FACTS AND ISSUES:

- A. **Fee:** Contractor charges \$50 per participant, per month. Habersham County will collect 25% of each participant fees. Averaging five participants per month, Habersham County is expected to collect \$625 in fees for the year.
 - B. **Agreement Terms:** The agreement is for one year, January 1st, 2021 to December 31st, 2021. Class schedules are Tuesday and Thursday from 6:30pm to 8:30pm and will be offered to participants ages 15 and older.
 - C. **Certification:** Stephen Rohrabacher is a certified Aikido instructor who will provide general liability coverage for his program and add Habersham County as additionally insured.
 - D. **References and Background:** Instructors references were checked and are favorable. A background check has been completed and approved.
 - E. **Safety:** Safety padding was purchased and provided by contractor so that all instructions take place on safe flooring.
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OPTIONS:

- 1) Approve recommendation to enter into a renewal agreement with North Georgia School of Aikido for 2021.
 - 2) Deny recommendation to enter into a renewal agreement with North Georgia School of Aikido for 2021.
 - 3) Commission defined alternative
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RECOMMENDED SAMPLE MOTION:

Motion to approve entering into a renewal agreement with North Georgia School of Aikido for 2021.

DEPARTMENT: Recreation

Prepared by: Kurt Cooper

Director: Kurt Cooper

ADMINISTRATIVE

COMMENTS: _____

County Manager **DATE:** _____

AGREEMENT FOR THE USE OF FACILITIES IN THE PROVISION OF PROGRAM SERVICES:

North Georgia School of Aikido, LLC

This agreement is made effective the latest date signed below by and between HABERSHAM COUNTY, a political subdivision in the State of Georgia (hereinafter referred to as “Habersham”), acting by and through the Parks & Recreation Department and North Georgia School of Aikido, LLC (hereinafter referred to as “Contractor”):

WHEREAS, the parties desire to place in writing the terms of their agreement regarding the Contractor’s request to utilize Habersham recreation facilities to provide Aikido instructions to area and neighboring residents utilizing property described as Ruby C. Fulbright Recreation and Aquatic Center approved facilities.

WHEREAS, Contractor has the proven expertise, training and certification to render such programming and services; and agrees to operate in accordance with the Habersham Policies and Procedures; and,

NOW THEREFORE, and in consideration of the mutual covenants and conditions hereinafter set forth, the parties hereby agree as follows:

- I. Grant and Description of Premises. Habersham County grants to Contractor and Contractor accepts from Habersham County the exclusive privilege of conducting the Contractor’s programming as stated above. Facilities included in this agreement include the adjoining classrooms, classrooms A and B. The specific dates and times are to be determined in advance and in conjunction with the HCRD Director.
- II. Use of Premises. The Contractor shall use subject property to conduct lessons in Aikido. Contractor shall not use or permit Habersham County facilities to be used for any other purpose without obtaining the prior written consent of Habersham County. Such requests must be submitted no less than seven (7) business days prior to the special use.
- III. Services to be Provided. Contractor will provide Aikido training for area and neighboring residents. Aikido is a Japanese martial art that emphasizes circular movements that blends with and redirects an opponent’s attack. Habersham County or Contractor may request changes in the scope of services to be performed by the Contractor under this Agreement. However, no change shall be effective and enforceable unless mutually agreed upon by written amendment to this Agreement executed by both parties and attached hereto.
- IV. No Employment Contract. Nothing contained in this Agreement shall be construed in such a manner so as to constitute the Contractor as an agent or employee of Habersham County, it being the intent of the parties that the Contractor shall remain independent, and neither party have any authority to bind the other in any respect except as specifically provided for herein. It is acknowledged by the Contractor that all employees, agents and volunteers of the Contractor are not employees or agents of Habersham County.

Responsibilities of Contractor.

A. General.

- (1) The said property shall be subject to the rules and regulations of Habersham County and HCRD. Habersham County reserves the right to adopt and implement additional park rules and regulations at any time during the term of this agreement.
- (2) Contractor shall maintain the subject properties and the improvements located thereon so as to return same to Habersham County at the end of the agreement term in the same condition as they now exist subject to ordinary wear and tear.
- (3) The Contractor’s maintenance obligation includes litter control during time of scheduled activities and events on subject premises to include removal of all paper and debris from the property at the conclusion of their use. Further, the collection and removal of all personal items belonging to the Contractor’s participants must be done at the conclusion of any use. Specifically, it shall be the obligation of the Contractor to maintain the subject premises in

conformance with all relevant codes and ordinances of Habersham County, including applicable Health Codes.

- (4) The Contractor will provide a written description of services being provided and provide updates as necessary.
- (5) The Contractor will notify HCRD in the event of any change in scheduling or temporary cancellation of daily scheduled activities.
- (6) The Contractor must provide supervision for participants during and following their assigned session.
- (7) The Contractor will abide by HCRD staff determination as to the availability of the Recreation Center facilities.
- (8) The Contractor will make no permanent changes to the facilities without the expressed written consent of Habersham County.
- (9) The Contractor may not offer any activities or programs which conflict or compete with programs offered by HCRD.
- (10) The Contractor will assume responsibility for the cost of repair to any damage sustained to facility areas resulting directly or indirectly from their use.
- (11) Inspection of facilities will be made by Contractor and Habersham County representatives immediately prior to scheduled program and immediately following program service.

- B. Expenses. Contractor agrees to pay all expenses incurred in conducting programming.
- C. Hours of Operation. Contractor shall schedule all activities and additional services during the normal operating hours posted **only**, unless prior written approval is made between the Contractor and the HCRD. Contractor agrees to not schedule any activities during days when the facilities are closed. Contractor further agrees that there will possibly be designated times throughout the year where scheduling conflicts will occur in programming and agrees that these conflicts will be discussed and worked out to the best interest of both programs if possible. If the scheduling conflicts cannot be resolved, the Habersham County Parks & Recreation Department Director will make the final decision on program scheduling. Contractor agrees to be present at all times during scheduled activities on said property.
- D. Nondiscrimination. Contractor shall not discriminate against any program participant, employee and/or sub-contractor because of race, creed, color, national origin, gender, affectional or sexual orientation, age, marital status, religion or disability by refusing to furnish such person any service or privilege offered to or enjoyed by area residents. Neither Contractor or his/her employees and/or sub-contractors shall publicize the services provided under this Agreement in any manner that would directly or by inference reflect on the acceptability of any person for instruction, programming and ancillary services based on race, creed, color, national origin, gender, affectional or sexual orientation, age, marital status, religion or disability.
- E. Concessions. Not Applicable, but if in the future the Contractor would like to include concession sales; the Contractor must first notify the HCRD for approval.
- F. Subcontractors. Contractor shall at all times use only those persons of good moral character as employees, volunteers and/or independent sub-contractors, and Contractor shall not retain any employee, volunteer and/or independent sub-contractor that Habersham County considers to be unfit or otherwise objectionable. Habersham County requires the Contractor and/or all sub-contractors to submit all employees to a criminal background check and/or drug test to determine the suitability of their employment. All program personnel shall be neatly dressed at all times and shall conduct themselves courteously in their relations with the public. All personnel engaged by Contractor shall be fully qualified for the specific service(s) they are to provide and shall be authorized or permitted to work under applicable state and local laws. The Contractor is required to provide copies of all relevant licenses or certificates for any service provider. If required, Contractor assumes full responsibility for making all required income tax, social security and other deductions and related payments and shall also file all required returns and forms needed to fulfill these responsibilities.

- G. Publicity. Contractor agrees that any program advertisement, publications, and public notices initiated by the Contractor will recognize HCRD and Ruby C. Fulbright Recreation & Aquatic Center as the sponsor & location of the Contractor's program.
- H. Complaints and Incidents. Contractor agrees to listen to public complaints about the Contractor's program and work out a fair solution to any and all issues. Contractor agrees to notify Habersham County by the quickest means practicable of any incidents and/or accidents associated with subject facilities.
- I. Fees. All program fees will be collected and posted by the Contractor for all Aikido registrants. All persons receiving Aikido instructions must register and pay Instructor before participating in any class.
- J. Scheduling of Facilities. The Contractor agrees that all facilities will be scheduled through HCRD Office. Scheduling changes may be made periodically with the approval of both parties.
- K. Programming. The scheduled activities of the Contractor shall be for public purposes open to participation by any citizen, subject to the right of the Contractor to impose reasonable rules on participants in Contractor scheduled activities.
- L. Reports. The Contractor shall provide Habersham County with a program service report at the end of each month. Such report shall include a summary of all program measures to include statistics on program participants and finances brought in through registration fees. Personal information on participants is not requested or required.

V. Responsibilities of Habersham County.

- A. Publicity. Habersham County will offer publicity opportunities to the Contractor as available. All publicity is to be submitted to HCRD for pre-approval and production. HCRD will maintain editorial privileges in all publications to lengthen or shorten information as needed.
- B. Equipment and Facility Use. Habersham County will furnish Contractor with classrooms and support amenities in a safe manner consistent with regulated and acceptable health standards deemed necessary to the conduct of the program and mutually agreed upon by the Contractor and Habersham County.
- C. Maintenance. Habersham County shall be responsible for the normal support and preventive maintenance of the premises.
- D. Utilities. Habersham County shall provide public utilities (water and electricity) for uses of the park by the Contractor and by the general public.

VII. Compensation. Contractor will receive payment equal to 75% of program fees collected for all Aikido registrants. HCRD will receive 25% of program fees collected. The Contractor will pay the HCRD fees due on the 1st of each month for the prior month's lessons.

VIII. Facility Usage.

- A. The Contractor shall not have the right to schedule the use of the facilities not written on the subject properties. All scheduling use of facilities must be approved by the HCRD, prior to.
- B. Habersham County may schedule other public and/or private uses of the facilities during times which the Contractor isn't using the property. The Contractor may schedule use of the facilities requested at other times by submitting a written request to HCRD. Such requests shall be approved by HCRD provided a conflicting use has not been scheduled by HCRD and any additional fees are agreed upon by the Contractor and compensated for in advance of the use.

- C. The facilities shall be available for public use by the citizens at all times not scheduled for Contractor activities. Habersham County reserves the right to schedule and utilize subject property, including structures and other facilities, for uses at all times not scheduled by the Contractor.
 - D. Contractor may modify their schedules with the approval of the HCRD.
- IX. Proprietary Materials. Contractor shall have the right to control use of personal property and equipment owned by the Contractor and stored in any authorized structures located on subject property. All personal property and equipment of the Contractor shall remain the personal property of the Contractor and shall be removed from the subject property within seven (7) days of any cancellation or termination of this Agreement.
- X. Term. The terms of this agreement shall be one **01/01/2021 to 12/31/2021** with an option to renew for an additional year if both parties are in agreement (compensation fees are subject to revision).
- XI. Termination for Cause. Contractor must support Habersham County rules and regulations and Habersham County may terminate this Agreement only for cause, which shall include fraud, theft, drug use, criminal activity, insubordination to Habersham County, moral offenses or any other offenses deemed damaging to the image or mission of the Parks & Recreation Department, failing to fulfill the obligations under this Agreement in a timely manner, or the Contractor's violating any of the material provisions of this Agreement. Termination by Habersham County for cause shall be initiated by giving written notice to the Contractor. Termination for cause in the sole discretion of Habersham County shall be effective immediately upon notice by Habersham County.
- Either party to this Agreement may provide notice to the other at the addresses indicated in paragraph XV below, that the party deems the other party to the Agreement to be in violation of the Agreement.
- A. The notice shall specify the nature of the alleged violation and the corresponding provision in this Agreement. Within seven (7) days, the other party shall respond in writing regarding the allegations of violation of the Agreement. If the alleged violations have been cured, the response shall so note. If after the exchange of notice of violation and response, either party considers the issue to not be resolved, that party shall notify the other of the date, time and place of a meeting (to be held within Habersham County and not sooner than seven (7) days from the date of said notice of meeting and not more than fourteen (14) days subsequent to the date of said notice of meeting) at which representatives of the parties shall discuss the alleged violation and the response thereto.
 - B. Irrespective of the foregoing, in the event Habersham County determines that any condition on the subject premises constitutes an immediate health hazard to the members of the public, Habersham County shall have the right to immediately take action to correct said condition. In that situation, Habersham County shall notify the representative of the Contractor identified in paragraph XV below, by telephone, facsimile transmission or other method designed to provide the most expedient notice to the Contractor.
 - C. In the event the meeting of the parties pursuant to the procedures in sub-paragraph A above does not resolve the alleged violation, either party may pursue any available judicial remedy. Upon final determination that the other parties in violation of this Agreement, either party shall have the right to terminate this Agreement on seven (7) days notice to the other
- XII. Indemnification. Contractor hereby agrees to defend, indemnify and hold Habersham County its agents and employees, harmless from any all claims, suits, liens, demands, debts, damages, loss or expense, including, but not limited to, attorney's fees and litigation expenses, suffered or incurred by the Owner as a result of the Contractor's failure to perform in accordance with the Agreement Documents and arising out of and resulting from Contractor's performance of the work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom, but only to the extent caused in whole or in part by negligent acts or omissions of

Contractor, a sub-contractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable.

- XIII. Insurance. Contractor is hereby notified and encouraged to purchase a General Liability policy. If purchased it must have Habersham County named as an additional insured on that policy. The insurance company used should be at least an A minus 6, Class VI, Best Rated company. Habersham County must be provided 30 days written notice of policy cancellation.
- XIV. Conflicts of Law. This agreement shall be deemed to be made in and shall be construed in accordance with the laws of the State of Georgia.
- XV. Entire Agreement. - This agreement contains the entire understanding of the parties and supersedes all previous verbal and written Agreements. No other agreement, statement or promise not contained herein relating to the subject matter of this Agreement shall be valid or binding. Any notice required under this Agreement shall be provided to the other party at the addresses indicated:

Habersham County Parks & Recreation Department
120 Paul Franklin Road, Clarkesville, GA 30523

Organization: North Georgia School of Aikido, LLC

Habersham County Government, Georgia

By: _____
BOCC Chairman

Date: _____

Attest: _____
Clerk of Commission

Date: _____

Organization: _____

Date: _____

Witness: _____

Date: _____